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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,431	07/05/2005	Ermanno Filippi	9526-60 (172347)	6386
30448	7590	06/04/2010		
AKERMAN SENTERFIT			EXAMINER	
P.O. BOX 3188			NGUYEN, HUY TRAM	
WEST PALM BEACH, FL 33402-3188				
			ART UNIT	PAPER NUMBER
			1797	
			NOTIFICATION DATE	DELIVERY MODE
			06/04/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip@akerman.com

# Office Action Summary

**Application No.**

10/541,431

**Applicant(s)**

FILIPPI ET AL.

**Examiner**

HUY-TRAM NGUYEN

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 18, 2010 has been entered.

### ***Response to Arguments***

2. Applicant's arguments, see Remarks, filed May 18, 2010, with respect to Claims 1-7 have been fully considered and are persuasive. The rejections of Claims 1-7 under 35 U.S.C. 102 (b) and 103 (a) have been withdrawn.

Applicant argues that "both the priority date of the present application and the PCT filing date are therefore earlier than the earliest claimed priority date of Application No. 11/572,403, which is July 29, 2004" and "In addition, the reactor claimed in copending Application No. 11/572,403 is structurally distinct from the reactor according to the claims of the present application, including different features related to the structure of the catalytic beds as well as to the distributing and connecting means". The Double Patenting Rejection is maintained since the copending Application No. 11/572,403, now indicated as Allowed, anticipates the claims as described below and

because a terminal disclaimer avoids the potential problems of dual ownership. "The use of a terminal disclaimer in overcoming a nonstatutory double patenting rejection is in the public interest because it encourages the disclosure of additional developments, the earlier filing of applications, and the earlier expiration of patents whereby the inventions covered become freely available to the public". In *re* Jentoft, 392 F.2d 633, 157 USPQ 363 (CCPA 1968); In *re* Eckel, 393 F.2d 848, 157 USPQ 415 (CCPA 1968); and In *re* Braithwaite, 379 F.2d 594, 154 USPQ 29 (CCPA 1967). MPEP 804.02

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 2, 3, and 4 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending

Application No. 11/572,403. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 1 of the application No. 11/572,403 comprises all the limitations of the present claims 1, 2, 3 and 4.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claim 5 and 6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of copending Application No. 11/572,403. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 2 of the application No. 11/572,403 comprises all the limitations of the present claims 5 and 6.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Allowable Subject Matter***

1. Claim 7 is allowed.
2. The following is a statement of reasons for the indication of allowable subject matter:
3. Regarding Claim 7, the closest prior art, **Foster et al. (US Patent No. 4,976,928)** discloses the claimed apparatus and process except for the reactor of Foster et al. is adiabatic and thus cannot operate in pseudo-isothermal conditions. Another prior art, **Koves (US Patent No. 5,405,586)** discloses the claimed apparatus and process except for the isothermal reactor of Koves uses alternate interleaved layers of

plate heat exchange elements and reactant channels containing catalyst bed (**Figure 2**) and there is only one radial reaction zone while the claimed apparatus and process recite a radial reaction zone comprising a respective catalyst bed and a plurality of heat exchangers places in said respective catalytic bed and comprise two reaction zones.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUY-TRAM NGUYEN whose telephone number is (571)270-3167. The examiner can normally be reached on MON- THURS: 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HTN  
6/1/2010

/Walter D. Griffin/  
Supervisory Patent Examiner, Art Unit 1797